

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ZACHARY GIAMBALVO, JOHN MOUGIOS,
SHANE MASHKOW, KEVIN MCLAUGHLIN,
MICHAEL MCGREGOR, FRANK MELLONI,
and RENAISSANCE FIREARMS INSTRUCTION,
INC., and all similarly situated individuals,

Plaintiffs,

22 Civ. 04778 (GRB)(ST)

-against-

SUFFOLK COUNTY, New York,
Police Commissioner RODNEY HARRISON,
in his Official Capacity, MICHAEL
KOMOROWSKI, Individually, ERIC BOWEN,
Individually, WILLIAM SCRIMA, Individually,
WILLIAM WALSH, Individually, THOMAS
CARPENTER, Individually, JOHN DOES
1-5, Individually and JANE DOES 1-5,
Individually,

Defendants.

**DECLARATION OF
ZACHARY GIAMBALVO**

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ZACHARY GIAMBALVO, declares pursuant to 28 U.S.C. § 1746 that:

1. I am a plaintiff in the above-captioned matter. I make this Declaration of my own personal knowledge and if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I submit this Declaration in support of Plaintiffs' application to preliminarily and permanently enjoin enforcement of policies and procedures of the Suffolk County Police Department and certain state statutes that are violating my right to purchase, possess, and carry a handgun for self-protection.

3. I am a resident of Suffolk County, New York. I have no prohibitions or disqualifications to the lawful purchase, receipt, possession, or ownership of firearms.

4. I intend to immediately purchase, possess, and carry a 1911-style platform handgun sold by Camp-Site, a federally licensed firearms dealer (FFL) located in Huntington, New York. I would have already purchased a 1911 but for the fact that New York law requires a handgun license to purchase, possess and carry a handgun and I cannot do either until the Suffolk County Police Department Licensing Bureau issues my handgun license.

5. Because the Second Amendment plainly states that I have the right to ‘keep and bear arms’, it is unconstitutional for me to have to seek permission and be subject to any wait time, particularly one that exceeds 30 days. Every FFL requires a NICS background check, which I have passed when purchasing long guns and will continue to pass. There is no reason for a license requirement at all.

6. But to comply with New York’s laws, I applied to the Suffolk County Police Department Licensing Bureau (SCPD) for a handgun license so that I could lawfully purchase, possess, and carry a handgun.

7. I looked up the requirements and the application process on the SCPD Licensing Bureau website and followed the instructions. The only application provided on the website was the “Applicant Questionnaire” and the application process as described required that I submit the completed Applicant Questionnaire with a \$10 check or money order made payable to “SCPD”, which I did in February 2020.

8. Months later, I contacted the Licensing Bureau to check on the status of my application and was told that my check was “never received”, and that I would have to submit another application and \$10 fee, which I did.

9. On July 19, 2022, the Licensing Bureau informed Mr. Giambalvo, “there is an approximately a 2 year wait before you will hear from an investigator for the in person interview.”

Attached hereto as Exhibit 1 is a true and accurate copy of the email from the SCPD Pistol Licensing Bureau.

10. In August 2022, I called the Licensing Bureau to find out when my application would be assigned to an investigator. The woman who answered the phone at the Licensing Bureau, identified herself as “Suzanne” and stated, “it’s going to take about a year and a half to 2 years to get called for the interview.” A true and accurate copy of the digital recording of the conversation is attached hereto as Exhibit 2.

11. I later learned that there was a state-imposed 6-month deadline for handgun license, which is also too much of a delay to exercise a protected constitutional right.

12. I also learned that some of the sheriff offices upstate provide their law enforcement Originating Agency Identifier number (ORI) so that handgun license applicants can get their unsuppressed fingerprint-base criminal history report and turn it in with their PPB-3 State Application. If I have to be licensed, and SCPD is either too busy, understaffed, or just doesn’t care to move the process along, I want to be able to speed this process up.

13. If SCPD provided its ORI number, I would get the DCJS report, the 2 statutorily required photographs, complete a PPB-3 State application and present all 3 to the Licensing Bureau. Because I have no disqualifiers to firearm possession, there is no reason why a license could not issue within 30 days.

14. I am not going to provide the information required by the CCIA under § 400.00(1)(o), including my social media account information, the names and contact information for any domestic partner or adults and children I live with, or be subject to an in-person interview.

15. I am also not going to ask my character references for an affidavit that requires them to swear under oath that I have not “engaged in any acts, or made any statements that suggest they are likely to engage in conduct that would result in harm to themselves or others.” Not that I

have done anything like that, but how would any applicant's character references know that information unless they were with that person every second of the day for their whole life? And what qualifies as an act or statements that "suggest" a particular result? The whole section is open to subjective interpretation and, like the social media disclosure, puts my First Amendment rights in conflict with the exercise of my Second Amendment rights.

16. I have been around firearms for many years, I grew up around firearms, I learned firearms safety at a young age, and I go target shooting (rifle) with my friends regularly.

17. When I am finally issued a handgun license and am able to purchase handguns, I will undoubtedly and regularly go to the range to go target shooting with them.

18. I am planning to take the 18-hour concealed carry training course required by the CCIA in December 2022 and provided by Frank Melloni through Renaissance Firearms Instruction, Inc. (RFI). The 18-hour course contains a live-fire component, which I will also complete.

19. Because SCPD has not issued my handgun license yet, I face credible threat of arrest and incarceration by SCPD Lt. Komorowski and/or other SCPD police officers. I learned that SCPD will arrest unlicensed individuals who engage in live-fire training by a duly authorized instructor, even though that is allowed under the Penal Law.

20. I should not have to choose between exercising a right protected by the Second Amendment or being arrested and put in jail.

21. Upon issuance of my license (and purchase of a 1911), I will carry a handgun on my person for self-defense regularly.

22. If I were to be arrested, even if the charge is dismissed, I will be ineligible to obtain a handgun or semiautomatic rifle license from SCPD in the future, which will cause me irreparable harm.

23. I again contacted the Licensing Bureau to see if their position had changed regarding accepting the PPB-3 upon presentment, as required by law. The man who answered the phone at the SCPD Licensing Bureau looked for my application in the system and informed me, "There is nothing else you have to do, just when we get up to you in the filing system."

24. When I asked if I could bring in a completed New York State Application (PPB-3), the man said, "The state application doesn't mean anything. That would be for the state troopers or the sheriffs, I don't know what application they use. But the one that you filled out is the one we have here so that's all you need." According to the Licensing Bureau, the statewide PPB-3 license application doesn't even apply to them.

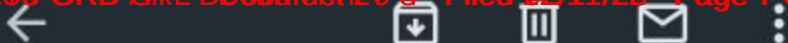
25. SCPD apparently just does whatever it wants, without regard to the Penal Law or the Constitution.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 28, 2022


Zachary Giambalvo

EXHIBIT 1



From SCPD Pistol Licensing • SCPDPi
stolLicensing@suffolkcountyny
.gov

To Zachary Giambalvo •
zjgiambalvo@gmail.com

Date Jul 19, 2022, 9:19 AM



Standard encryption (TLS).

[View security details](#)

We received your payment on 6/23/22
– there is approximately a 2 year wait
before you will hear from an
investigator for the in person interview.

EXHIBIT 2

DIGITAL RECORDINGS SERVED AND SUBMITTED TO THE COURT IN HARD COPY FORMAT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ZACHARY GIAMBALVO, JOHN MOUGIOS,
SHANE MASHKOW, KEVIN MCLAUGHLIN,
MICHAEL MCGREGOR, FRANK MELLONI,
and RENAISSANCE FIREARMS INSTRUCTION,
INC., and all similarly situated individuals,

Plaintiffs,

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**DECLARATION OF
SHANE MASHKOW**

SUFFOLK COUNTY, New York,
Police Commissioner RODNEY HARRISON,
in his Official Capacity, MICHAEL
KOMOROWSKI, Individually, ERIC BOWEN,
Individually, WILLIAM SCRIMA, Individually,
WILLIAM WALSH, Individually, THOMAS
CARPENTER, Individually, JOHN DOES
1-5, Individually and JANE DOES 1-5,
Individually,

Defendants.

-----X

SHANE MASHKOW, declares pursuant to 28 U.S.C. § 1746 that:

1. I am a plaintiff in the above-captioned matter. I make this Declaration of my own personal knowledge and if called as a witness, I could and would testify competently to the truth of the matters set forth herein.
2. I submit this Declaration in support of Plaintiffs' application to preliminarily and permanently enjoin enforcement of policies and procedures of the Suffolk County Police Department and certain state statutes that are violating my right to purchase, possess, and carry a handgun for self-protection.
3. I am a resident of Suffolk County, New York and I have no prohibitions or disqualifications to the lawful purchase, receipt, possession, or ownership of firearms.

4. I intend to immediately purchase, possess, and carry a Glock-19 from Dark Storm Industries in Oakdale, New York (Suffolk County). I would have already purchased a Glock-19 from Dark Storm but for SCPD's delays in issuing my handgun license. New York law prohibits the transfer or receipt of a handgun without a handgun license.

5. Even if I purchased a handgun from an FFL (subject to a NICS background check) outside of New York State, I could not possess or carry it to protect myself in New York because I would face criminal charges for possessing a handgun without a license – even in my home.

6. I object to being subjected to a discretionary licensing scheme to simply exercise my guaranteed constitutional right to keep and bear arms - conduct presumptively protected by the plain text of the Second Amendment.

7. I also intend to carry a handgun concealed for self-protection, but I will not comply with the disclosure of information under Penal Law § 400.00(1)(o), like providing my social media accounts, personal relationships and family information, an in-person interview, the character reference information, the 18-hour training requirements, or the subjective 'moral character' language. I also do not want to be at the mercy of a county employee with discretion to require me to provide "any such other information" as the new regulations allow. None of that information has any relevance to the fact that I have no disqualifiers under state or federal law to the purchase, receipt, transfer, or possession of firearms.

8. To be issued a handgun license in New York, an extensive background check is conducted – my fingerprints will be checked in the New York and federal databases for any disqualifying events, which there are none. No other government-imposed criteria should interfere with my right to purchase, possess, and carry a handgun for self-defense.

9. To comply with New York law, in 2020 I applied for a handgun license to my local licensing officer, the SCPD Licensing Bureau. I went to the SCPD website find out what needed to be done. The process required me to submit the application with a \$10 filing fee made payable to “SCPD.” The only application mentioned and provided on the SCPD website was the Applicant Questionnaire.

10. I completed and submitted the Applicant Questionnaire and the \$10 fee to the Licensing Bureau. Months later, and in and around November/December 2021, I called the Licensing Bureau to check on my application, and I was told that my check was “never received” and that I would have to submit another application and \$10 fee.

11. I completed another Applicant Questionnaire and filed it with the Licensing Bureau along with another \$10 fee in February 2022 – 8 months ago.

12. In July 2022, I called Licensing Bureau to find out when I would be called in to be fingerprinted. The woman at the Licensing Bureau laughed, then told me that I should get an appointment sometime in *February 2024*.

13. I also emailed the Licensing Bureau for the same information; the Licensing Bureau responded on July 14, 2022 indicating that office was “currently processing November/December 2020, there is an extremely long wait for the interview.”

14. I contacted the Licensing Bureau a few months later and was told that they are currently scheduling interviews for people who submitted the questionnaire in February 2021.

15. I was not aware that the statutory 6-month timeframe for issuing a license did not begin until presentment of the State Application (PPB-3). I would gladly submit the completed PPB-3 application, the 2 required photographs, and obtain my own my fingerprint-based unsuppressed criminal history report from the Division of Criminal Justice Services but SCPD

does not provide the ORI number for obtaining the report and it is my understanding that they will not accept the PPB-3 upon presentment, so submitting it would be futile.

16. I work in New York City every day, Monday through Friday. I leave my home before 9:00 a.m. and I do not return until after 4:30 p.m. The Licensing Bureau is only open Monday through Friday from 9:00 a.m. until 4:30 p.m. If required to be fingerprinted, personally interviewed, and/or photographed at the Licensing Bureau, I will have to take time off from work just to be able to exercise a guaranteed constitutional right. I should either be able to provide the required documents – fingerprint report, PPB-3 and photographs – by mail or, if in person, at a time outside of banker's hours. SCPD is a police station after all.

17. I have contacted multiple businesses on Long Island, including Dark Storm Industries in Oakdale, New York (Suffolk County), regarding the 18-hour training required to apply for a concealed carry license. Each business confirmed that a handgun permit is required to take the CCW training.

18. The fees range from around \$400 to \$800 (Dark Storm's fee), which is not a nominal amount of money to have to spend to exercise a constitutional right. For certain, I plan to train regularly at the gun range, at my own pace and financial ability. But to prevent me from protecting myself with a handgun until I satisfy a government-imposed condition is an obvious infringement and violates the Second Amendment.

19. The SCPD regulations and state statutes challenged in our complaint and this motion should be preliminarily and permanently enjoined.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 31, 2022

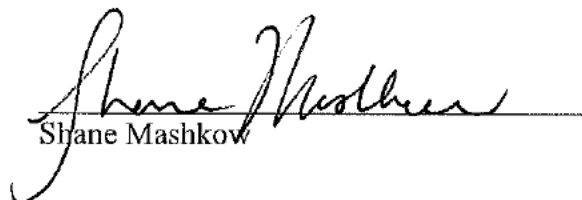

Shane Mashkow

EXHIBIT 1

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Thursday, July 14, 2022, 4:08 PM, SCPD Pistol Licensing
<SCPDPistolLicensing@suffolkcountyny.gov> wrote:

We are currently processing November/December of 2020, there is an extremely long wait for the interview.

From: shane mashkow [mailto:shanemashkow@yahoo.com]
Sent: Monday, July 11, 2022 1:53 PM
To: SCPD Pistol Licensing
Subject: Pistol License Update

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hello,

I'm emailing today for an update on the progress of my Pistol License. My \$10 check was cashed February 17th of 2022 and haven't received a communication since.

Thank you,

Shane Mashkow